

transfer or lease of GTE Hawaiian Tel's assets to TelHawaii for serving this area. GTE Hawaiian Tel sought reconsideration of the decision selecting TelHawaii as COLR, but the PUC subsequently held that it was necessary and in the public interest to condemn GTE Hawaiian Tel's assets and to allow TelHawaii to use these condemned assets in its operations as a public utility.<sup>337</sup> GTE Hawaiian Tel's appeal of this decision is now pending in the Hawaii Supreme Court.<sup>338</sup>

## 6. Examples From Foreign Countries: Chile & Peru

173. In 1994, Chile's legislature passed a telecommunications law that established the Rural Telecommunications Development (RTD) Fund. Since 1995, Subsecretaria de Telecomunicaciones (SUBTEL), Chile's regulatory body, has allocated RTD funds<sup>339</sup> to companies through an annual competitive bidding process. The competitive bidding process is initiated when SUBTEL, after consulting with local and regional governmental entities, issues an annual prioritized list of RTD projects. SUBTEL assigns an "RTD maximum subsidy" for each project and issues a public notice calling for technically qualified companies to submit bids for one or more RTD projects.<sup>340</sup> RTD funds can be used by the selected companies to subsidize between 1/4 and 1/3 of the initial investment costs of rural projects. Bids are submitted in a single-round format and opened during a public meeting, and the bid that has the lowest RTD support wins. If two or more of the competing companies submit the same low bid, the RTD project and support are assigned by lottery. Companies that receive RTD funds are not given any exclusive market rights to profitable customers in the areas they serve.

174. In Peru, in 1994, the Organismo Supervisor de la Inversion Privada de Telecomunicaciones (OSIPTEL), the Peruvian regulator that administers the Fund for Investment in Telecommunications (FITEL), stated that it would allocate FITEL funds through a competitive bidding process similar to Chile's.<sup>341</sup> Also that year, OSIPTEL was designing the selection parameters for the projects.<sup>342</sup>

<sup>337</sup> Hawaii PUC Decision & Order No. 15602 (1997).

<sup>338</sup> We also note that, in response to an August 16, 1996 petition by TelHawaii, the Accounting and Audits Division of the FCC's Common Carrier Bureau issued an order creating a new study area containing a rural telephone exchange serving approximately 2,447 access lines in the Ka'u area and allowing TelHawaii to operate under rate-of-return regulation. In the Matter of Petition for Waivers filed by TelAlaska, inc. and TelHawaii, Inc., *Memorandum Opinion and Order*, DA 97-1508 (CCB, Acct'g & Audits Div.), released July 16, 1997. In this order, the Division denied TelHawaii's request for a waiver of Sections 36.611 and 36.612 of the Commission's rules to enable it to receive universal service support immediately upon transfer of GTE Hawaiian Tel's assets to TelHawaii.

<sup>339</sup> RTD funds come from the annual government budget and are allocated to SUBTEL. Ley General de Telecomunicaciones, No. 18.168, Title IV, Article 28A, "Del Fondo de Desarrollo de Telecomunicaciones".

<sup>340</sup> See Bjorn Wellenius, *Extending Telecommunications Service to Rural Areas – The Chilean Experience*, Viewpoint, The World Bank Group Note No. 105, Feb. 1997; SUBTEL de Chile. *Funcionamiento del Fondo de Desarrollo de las Telecomunicaciones*. SUBTEL document, February, 1997.

<sup>341</sup> FITEL funds come from a one percent tax on the gross revenues of all telecommunications companies. Texto Unico Ordenado de la Ley de Telecomunicaciones. Decreto No. 013-93-TCC. Artículo 12. *Marco Legal de las Telecomunicaciones*, at 13, OSIPTEL, Nov. 1994.

<sup>342</sup> The FITEL program is intended to expand universal service by bringing telephone service to areas not currently served by Telefonica de Peru, the monopoly provider of telephone service.

## 7. Spectrum Auctions

175. In the Omnibus Budget Reconciliation Act of 1993, Congress amended the Communications Act of 1934 by adding Section 309(j), which granted the Commission authority, under certain circumstances, to employ competitive bidding to assign licenses to use portions of the electromagnetic spectrum. After adopting rules to govern this process,<sup>343</sup> the Commission began its spectrum auctions in 1994.

176. The first set of licenses to be auctioned authorized licensees to provide narrowband Personal Communications Services (PCS). Because of the likelihood that the values of these licenses were interdependent (*i.e.*, the value placed by a bidder on one license depends upon whether it also holds another license), the Commission chose to employ simultaneous, multiple-round auctions to assign these licenses. The Commission began by auctioning a relatively small number of licenses, 10 nationwide narrowband PCS licenses, in July 1994. As the Commission gained experience, it gradually expanded the number of licenses included in each auction.<sup>344</sup> Thus far, the Commission has held twenty-three spectrum auctions, employing both simultaneous and sequential auction designs, and both oral outcry and electronic methods for bidding.<sup>345</sup> Licenses for terrestrial-based mobile and fixed services (including the narrowband and broadband PCS services, the Specialized Mobile Radio Services, and the Wireless Communications Service), as well as for satellite broadcasting services (including the Direct Broadcast Satellite service and the Digital Audio Radio Service), have been assigned using competitive bidding.

177. To fulfill the requirements of Section 309(j), we have adopted general rules and procedures governing the types of auction designs that may be employed for spectrum auctions.<sup>346</sup> We have set eligibility rules, requiring that prospective bidders make pre-auction upfront payments,<sup>347</sup> and allowed alteration of competitive bidding mechanism details for each auction, including minimum levels of required bidding activity, minimum bid increments and

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<sup>343</sup> See, e.g., *Implementation of Section 309(j) of the Communications Act-Competitive Bidding*, Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994); *Implementation of Section 309(j) of the Communications Act-Competitive Bidding*, Third Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2941 (1994); and *Implementation of Section 309(j) of the Communications Act-Competitive Bidding*, Fifth Report and Order, PP Docket No. 93-253, 9 FCC Rcd 5532 (1994).

<sup>344</sup> The largest auction conducted so far has been the D, E and F block broadband PCS auction, in which 1,479 licenses were put up for bid simultaneously.

<sup>345</sup> Most of the Commission's spectrum auctions have been conducted electronically, using computer software developed by the Commission specifically for this purpose.

<sup>346</sup> See Subpart Q of Part 1 of our rules, 47 C.F.R. §§ 1.2101 *et seq.* In addition, the Commission has adopted service-specific rules that govern auctions of licenses in particular services. See, e.g., 47 C.F.R. §§ 24.701 *et seq.* (rules for broadband PCS auctions), and 90 C.F.R. §§ 90.801 *et seq.* (rules for 900 MHz SMR auctions). Since the competitive bidding for universal service support contemplated in the instant proceeding does not involve choosing from among mutually exclusive applications for licenses to use the electromagnetic spectrum, Section 309(j) of the Act, and the Commission's rules adopted pursuant thereto, would not apply.

<sup>347</sup> In Section 1.2106 of the Commission's rules, 47 C.F.R. § 1.2106, the Commission authorized the collection of upfront payments and set forth general rules concerning them. Service-specific rules require upfront payments in particular auctions. See, e.g., 47 C.F.R. § 24.706 (upfront payment rule for broadband PCS auctions). *Public Notice*, Report No. AUC-94-04, released September 19, 1994 (setting forth auction procedures, including activity requirements, bid increments and stopping rules, for the FCC's auction of A & B block broadband PCS licenses).

stopping rules for ending the auction.<sup>348</sup> These rules are intended to ensure that in simultaneous multiple round auctions only sincere bidders participate and that auctions proceed at a reasonable pace and can be brought to a close in a rational manner.

178. We also have adopted rules that require payments in the event of bid withdrawal or default, so that bidders understand that they will be held to the amounts of their bids.<sup>349</sup> In general, a bidder who withdraws a high bid during the course of an auction will be subject to a payment calculated as the difference between the amount of the withdrawn bid and the amount of the successful bid the next time the license is offered by the Commission. Thus, no payment is required if the subsequent successful bid exceeds the withdrawn bid. If a successful bidder defaults or is disqualified after the close of an auction, that bidder must pay the amount already described and an additional three percent of the lesser of the defaulted bid amount and the subsequent successful bid. This additional payment is intended to encourage a bidder who has any doubt about its ability to make payment on a license to withdraw its bid before the auction closes, thereby giving others an opportunity to bid on that license.

179. Our rules concerning spectrum auctions also include anti-collusion provisions that were designed to work in conjunction with existing antitrust laws and to ensure that each bidder in a spectrum auction has access to the same information about all joint arrangements into which other bidders may have entered. These rules prohibit bidders from cooperating, collaborating, discussing, or disclosing the substance of their bids or bidding strategies with other bidders unless they are members of a bidding consortium or joint bidding arrangement that has been identified on the pre-auction application.<sup>350</sup> In addition, consistent with objectives for competitive bidding detailed in Section 309(j), there are rules to enable small businesses and businesses owned by members of minority groups and women, to overcome historical difficulties in gaining access to capital, thereby promoting opportunities for these groups to participate in the provision of spectrum-based services. These provisions included limiting eligibility to bid on licenses in "Entrepreneurs' Blocks" to companies below a certain size and making available bidding credits on certain licenses and installment payment plans that allow a successful bidder to spread out payment for a license over the license term.<sup>351</sup>

180. The Commission recently initiated a proceeding in which we will comprehensively examine our general competitive bidding rules for all auctionable services to identify how they can be changed to make our licensing processes more efficient.<sup>352</sup>

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<sup>348</sup> See 47 C.F.R. § 1.2104. Specific bidding procedures for each auction are usually announced by way of a public notice issued prior to the auction. See, e.g., *Public Notice*, Report No. AUC-94-04, released September 19, 1994 (setting forth auction procedures, including activity requirements, bid increments and stopping rules, for the FCC's auction of A & B block broadband PCS licenses).

<sup>349</sup> See, e.g., 47 C.F.R. § 1.2104(g) (general competitive bidding rules), and 47 C.F.R. § 24.704 (bid withdrawal rule applicable to broadband PCS auctions).

<sup>350</sup> 47 C.F.R. § 1.2105(c).

<sup>351</sup> See generally 47 C.F.R. § 1.2110. Special provisions also have been adopted to aid "designated entities" in connection with spectrum auctions for particular services. See, e.g., 47 C.F.R. § 24.309 (narrowband PCS); 47 C.F.R. § 24.709 (broadband PCS); 47 C.F.R. § 90.810 *et seq.* (900 MHz SMR).

<sup>352</sup> See Amendment of Part 1 of the Commission's Rules, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, WT Docket No. 97-82, FCC 97-60 (rel. Feb. 28, 1997).

## 8. FTS2000

181. The contract for providing telecommunications services to the United States government -- called FTS2000 -- was awarded by the General Services Administration (GSA) in 1988 to two different firms: 60% to AT&T and 40% to US Sprint. The decision to divide the contract between the two lowest bidders and to divide it 60%-40% was suggested by Congressman Jack Brooks and GSA agreed to do so. GSA then asked Coleman Research Corporation (CRC), an engineering firm, to quantify and suggest how to minimize the deleterious effects of splitting the contract. CRC estimated that the employment of a second carrier would raise actual costs by about eight percent, but that varying the allocation percentages would not have any significant effect on total costs. CRC was unable to estimate the likely benefits. The RFP was released in January 1988.<sup>353</sup>

182. Although the contract was for ten years, there were two points in time where the two successful firms (AT&T and Sprint) had an opportunity to rebid to secure a larger share of the total contract. Under this price redetermination/service reallocation (PR/SR) provision, 40% of the market shares of the two firms, *i.e.*, 24% from AT&T and 16% from Sprint, were made subject to the rebidding with three possible results. If the two firms made similar bids then each firm would retain its current market share, but if one firm bid significantly less than the other, than that firm would capture the 40% of the contract that was now available. AT&T and Sprint both originally bid \$.18 per minute. After the first rebidding both lowered their bids to \$.14 per minute. After the second rebidding AT&T lowered its bid to \$.07 per minute. Thus, when AT&T significantly underbid Sprint for the final three year period, AT&T captured 40% of the 40% Sprint market share leaving AT&T with 76% of the revenues and Sprint with only 24% of the revenues.<sup>354</sup>

183. GSA's analysis of the contract found that splitting the contract was not as costly as they had expected because the size of the contract was large enough to permit multiple firms to operate at their minimum efficient scale. Furthermore, GSA found that one of the most significant reasons that AT&T had for bidding aggressively was to avoid the danger that it would be underbid in subsequent rounds and that the news of such a significant loss would be heavily publicized by the successful bidder, suggesting that the federal government no longer regarded AT&T as the best choice.<sup>355</sup>

184. GSA is now considering how to implement the successor to FTS2000, so called FTS2001. GSA is considering whether it might permit as many as three firms to gain shares of federal revenues but, the number of successful bidders will depend on the differences between their bids.<sup>356</sup>

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<sup>353</sup> Mitretek *ex parte* meeting at the Federal Communications Commission, Washington, DC, Aug. 12, 1997, discussion with Robert R. Menna and David A. Garbin (dgarbin@mitretek.org). (Mitretek Aug. 12 *ex parte*).

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*

<sup>356</sup> *Id.*

## 9. Cable Franchise Bidding

185. Local cable television franchising authorities in the United States have generally awarded cable television franchises by issuing RFPs which solicit competitive bids. A municipality establishes a cable franchise once it grants a company permission to string wires above or below the public streets within a set area for a set time-period.<sup>357</sup> The RFP generally contains the area's minimum requirements for the municipality's desired cable service. It is published in a local newspaper and at least one national trade publication, after which companies have at least three months to prepare and submit their applications.<sup>358</sup> An average of four to five companies initially submit bids. Once the bidding period is over, local policymakers select the most promising few bids and then conduct hearings on them. Remaining bidders are given the opportunity to amend their proposals. The competition among remaining bidders ensures that the quality of service is high. A single successful bidder is usually awarded an exclusive, renewable contract, usually 15 years in duration.<sup>359</sup>

186. Once the contract is awarded, the successful bidders and the municipality commence negotiations for the unresolved issues in the contract. Many view this franchising relationship as akin to direct regulation.<sup>360</sup> Critics of the cable franchising system argue that the selection process is political and subjective.<sup>361</sup>

187. To guarantee a cable franchisee's obligations to the municipality under a franchise agreement, the municipality generally collects a form of collateral. It may require performance bonds or security deposits, partially in the form of cash or municipal bonds, the remainder in a letter of credit. The collateral acts as a security for damages, losses, or expenditures that the municipality incurs as a result of the successful bidder's failure to comply with the contract, or pay all the funds due to the municipality.<sup>362</sup>

## 10. Essential Airline Service

188. To ensure that smaller communities always remain linked to the national transportation system after the passage of the Airline Deregulation Act of 1978, Congress established the Essential Air Service Program, which is administered by the Department of Transportation (Department).<sup>363</sup> Under the Program, if an airline wishes to terminate, suspend, or reduce its service to a particular area, the airline must file a 90-day notice with the appropriate

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<sup>357</sup> John Thorne, Peter Huber, *Federal Broadband Law* §4.5, at 229 (Boston: Little, Brown, 1995).

<sup>358</sup> Mark A. Zupan, *Non-Price Concessions and the Effect of Franchise Bidding Schemes on Cable Company Costs*, 20 *Applied Economics* 305 (1989).

<sup>359</sup> *Id.* at 305, 306.

<sup>360</sup> Mark A. Zupan, *The Efficacy of Franchise Bidding Schemes in the Case of Cable Television: Some Systematic Evidence*, 32 *J.L. & Econ.* 401, 403 (1989).

<sup>361</sup> See Mark Nadel, *COMCAR: A Marketplace Cable Television Franchise Structure*, 20 *Harv. J. On Legis.* 541, 547 (1983) (commenting that selection procedure requires political maneuvering by applicants, in addition to the making of unrealistic promises for service by bidder).

<sup>362</sup> Daniel L. Brenner, Monroe E. Price, and Michael I. Meyerson, *Cable Television and Other Nonbroadcast Video, Law and Policy*, § 3.07[8][c], (1997).

<sup>363</sup> 49 U.S.C. §§ 41731-41742.

state aviation agency, officials in the affected community, and the Department. Before the 90-day notice period ends, other carriers have the opportunity to propose to replace without support the incumbent carrier. If no carrier expresses interest in serving the area without support before the 90-day notice period ends, the Department must solicit proposals for subsidized service.

189. Carriers submitting proposals must carefully detail the calculations of their support need. The Department reviews all proposals, meets with each applicant to finalize their proposals, and then solicits the opinions of the affected community's members. The Department selects a new carrier after weighing factors that include the following: the community preferences; the amount of support required; the quality of proposed service; the applicant's financial stability; the applicant's reputation for reliability; and the applicant's marketing relationships with major carriers. The Department usually chooses a carrier that is then eligible to provide supported service for a two-year period. As the end of the two-year period approaches, the Department will either renegotiate the support rate with the incumbent and publish this tentative rate in an order to show cause, or solicit new proposals in the same manner used for replacing an incumbent as previously described.<sup>364</sup>

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<sup>31</sup><sup>364</sup> Department of Transportation, Essential Air Service and Domestic Analysis Division, *What is Essential Air Service?* (May, 1997).

**APPENDIX E: ARIZONA PROPOSAL CONCERNING UNIVERSAL SERVICE  
SUPPORT FOR INITIAL CONNECTION CHARGES**

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APR 28 1998

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
Federal-State Joint Board  
on Universal Service

)

CC Docket No. 96-45

)

)

)

Forward-Looking Mechanism  
for High Cost Support

)

CC Docket No. 97-160

)

**PROPOSAL OF THE ARIZONA CORPORATION COMMISSION  
FOR DISTRIBUTION OF FEDERAL USF FUNDS TO ESTABLISH  
SERVICE TO LOW-INCOME CUSTOMERS IN UNSERVED AREAS, OR IN THE  
ALTERNATIVE, FOR AMENDMENT OF THE MAY 8, 1997 REPORT AND ORDER  
TO PROVIDE FOR FEDERAL USF DISTRIBUTION FOR THIS PURPOSE**

**I. INTRODUCTION**

On April 15, 1998, the Common Carrier Bureau ("CCB") of the Federal Communications Commission ("FCC" or "Commission") released a Notice, DA 98-715, seeking comment on proposals to revise the methodology for determining federal universal service support.<sup>1</sup> The Notice states:

In the Report to Congress, the Commission states that prior to implementing the Commission's methodology for determining high cost support for non-rural carriers, the Commission will complete a reconsideration of its 25/75 decision and of the method of distributing high cost support. [footnote omitted]. The Commission also states that it will continue to work closely on these issues with states members

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Because of the time constraints for submitting a proposal, the Arizona Commission was unable to provide supporting data and to discuss these issues in depth. Therefore, the Arizona Commission will submit more extensive comments on its proposal in the comment phase of this proceeding.

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of the Federal-State Joint Board on Universal Service (Joint Board), including holding an en banc hearing with participation by the Joint Board Commissioners. [footnote omitted].

The CCB encouraged interested parties to submit additional proposals for modifying the Commission's methodology, or updates to the proposals already a part of the record in this proceeding.

The Arizona Corporation Commission ("Arizona Commission") submits this proposal covering a very discrete issue which undermines the universal telephone service objective in several regions of this country including some western states such as Arizona, and upon which the federal funding mechanism has thus far been silent. Unlike the other proposals now before the FCC or likely to be filed with it in response to its notice, the Arizona Commission's proposal is not intended as a comprehensive alternative to the High Cost Fund Distribution Model but is directed to address an insidious problem found in regions of the United States including some western states, such as Arizona. That problem is the inability of low-income customers located in unserved areas to obtain telephone service because they cannot afford to pay the line extension or construction charges necessary to extend facilities to their homes.

The present distribution methodology for the High Cost Fund at the federal level does not provide any vehicle or method of assistance to help the "unserved" rural low-income customer to obtain service; rather support has traditionally and still is only directed towards keeping the rates low for rural customers who already have telephone service. The Arizona Commission urges the FCC to give some recognition to this problem at the federal level and to work with states to resolve it. These Americans are in reality the essence of what a "universal telephone service" fund should be all

about.

The Arizona Commission proposes that a fixed proportion of federal funds be set aside to begin to address the problem of unserved areas and the inability of low-income customers to obtain telephone service because they cannot afford to pay the required line extension or construction charges. This portion of the fund would be used solely to partially offset the line extension or construction charges required to put facilities in place to reach these low-income or Lifeline customers. The Arizona Commission proposes that distribution of these funds would be in accordance with fixed federal and state guidelines.

The underlying tenet of this proposal is that a "one-size-fits-all" solution is rarely the answer in instances such as this, when faced with an issue as complex and multifaceted as universal telephone service in 50 states with the diverse and varying terrain and demographics. The Arizona Commission submits that the federal High Cost Fund, if it is to truly be effective, must address this sort of variance between the states.

## **II. BACKGROUND AND NATURE OF THE PROBLEM.**

Arizona's population is clustered primarily around its two largest urban centers, Phoenix and Tucson. U S WEST Communications, Inc. is the largest local exchange carrier in the state, with approximately 2.2 million access lines. U S WEST is the incumbent local exchange carrier (ILEC) in Phoenix and Tucson's metropolitan areas, as well as large parts of the remainder of the state. Most of the other regions of the state are divided between the other ILECs. The Arizona Commission has also certificated approximately 15 competitive local exchange carriers in Arizona. Because Arizona's population is largely urban in nature, it has never been a large recipient of the federal High Cost Funds. In Arizona, there are unserved regions located both within and outside the exchange

boundaries of many ILECs.

Most ILECs have construction charge and line extension charge tariffs that apply when new service is requested in an unserved area. When an unserved customer within the certificated area of an ILEC requests service, the ILEC will typically do an engineering study to determine the cost of putting the necessary facilities in place to provide service. As an example of how an ILECs line extension tariffs generally operate, if the ILEC puts a six-pair cable in, the actual cost to the ILEC may be \$20,000. Most ILEC line extension tariffs then allocate only a portion of this cost over the number of projected customers necessary to achieve full capacity on the facility. Thus, in this case where a six-pair cable is utilized, the line extension charges to the individual customer may be around \$2,000.

In one recent situation in Arizona, a low-income elderly woman had requested service back in 1993 and was provided with a line extension estimate of approximately \$2,700. She could not afford to have local service connected and is still without telephone service. This customer was recently given a new estimate of \$1,500. However, even with options such as deferred payment that may be acceptable for the average American, this is no option for low-income customers because they simply cannot afford to make the payments, even over time, to get the facilities in place.

### **III. EXISTING MEASURES DO NOT ADDRESS THIS PROBLEM.**

First, the provision of the Federal Act relating specifically to unserved areas, e.g. Section 214(e)(3), does not apply here. In the example given above, the ILEC was willing to provide service to the customer. Thus, this is not a case that would fall under the provision of Section 214(e)(3) since the carrier is willing to provide service. In other words, this is not a situation where a state commission would order the company to provide service, because the company is already willing to

do so. Rather, in these cases, the low-income customer simply cannot afford to pay the line extension charges required by the Company's tariffs.

Second, as already discussed, the focus of the High Cost Fund has in the past been and continues to be upon keeping the monthly phone rates of rural subscribers affordable. Thus, its sole focus is upon keeping the rates low of rural customers who already have phone service.

Third, the Lifeline Program subsidizes the monthly rates of low-income customers. Recently, the FCC's expanded Lifeline and Link Up programs went into effect. In Arizona alone, it is estimated that approximately 177,000 low-income customers qualify under the federal default criteria for participation in the program. However, because some of these low-income customers in Arizona are unable to pay to have the facilities connected to them, they are unable to take advantage of the important program and the lower monthly rates.

Fourth, the Commission's Link Up Program is limited to providing a reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence. 47 C.F.R. § 54.411(a)(1). The reduction is half of the customary charge or \$30.00, whichever is less. *Id.* In addition, the Commission's Link Up Program also waives the interest charges for a period of one year for connection charges up to \$200. While this provides some measure of relief, it is wholly inadequate in most instances.

Fifth, existing measures at the state level are also inadequate to address this problem in many instances. As already explained, the approved line extension tariffs of most companies already provide for a reduced and pro-rated cost to the customer.

Sixth, while the Rural Utilities Service (RUS) provides low interest loans to companies for the purpose of bringing facilities into remote areas, this has not solved the problem by any means.

Finally, cellular or wireless technologies are not a viable option at this time either since the networks do not yet exist in remote areas or in some instances wireless cannot be provided due to geographical constraints. In some extreme cases, the customer may not have electricity yet. In other cases, the cost of cellular calls is still extremely expensive, so from an economic perspective, it is not the functional equivalent of wireline service yet.

**IV. COOPERATION AND COORDINATION BETWEEN STATES AND FCC ARE NECESSARY TO RESOLVE THIS PROBLEM.**

The Arizona Commission strongly believes that cooperation and coordination between the states and the FCC are necessary to resolve this problem.

The Arizona Commission has recently, through a Task Force, begun to reexamine its own state universal service rules to address issues such as this. The Task Force has had a series of meetings, which have included representation by individuals living in unserved areas. The Task Force's efforts recently culminated in proposed revisions to the Arizona Commission's own USF Rules. Many of these revisions attempt to provide some incentive to carriers to construct facilities to unserved areas. The Arizona Commission Staff has asked for a further round of Task Force comments on the proposed revisions. Once revised, the Task Force will present them to the full Arizona Commission.

Nonetheless, given the seriousness of the problem, the Arizona Commission believes that some recognition of this problem and action by the Joint Board and FCC is also necessary.

**V. ARIZONA COMMISSION'S PROPOSAL FOR MODIFYING THE EXISTING FEDERAL DISTRIBUTION MODEL TO ADDRESS THIS PROBLEM.**

**A. Defining the Problem and Recognition of the Problem as a Universal Service Issue at the Federal Level and the Need for Action to Remedy It.**

The first step in the Arizona Commission's proposal involves defining the problem. We must recognize that low income citizens without telephone service and unable to get it is as serious a problem and as critical a threat to universal service as people living in rural areas faced with the prospect of higher than average telephone rates. Then, it must be recognized that some action is necessary to remedy the problem.

**B. Determining the Extent of this Problem in States Affected by it.**

A recent article in *U.S. News & World Report* reported that:

Yet a study by state utility regulators last summer revealed that there are some 5,000 involuntary phoneless souls like the Womacks in Arizona alone. Though no overall national figures exist, interviews with phone companies big and small, as well as with consultants, regulators, and other government officials, suggest there are thousands of other Americans in mostly rural areas who cannot get phone service. February 2, 1998 Business and Technology Section, pp. 39-40.

As this passage indicates, no one is aware of the true extent of this problem. The Arizona Commission does not know the real extent of this problem in Arizona. The Arizona Commission is at the present time attempting to gather information on the extent of this problem in Arizona so that it can attempt to address this issue at the state level more effectively on an ongoing basis.

The Arizona Commission suggests that the Joint Board and the Commission attempt to gather similar information to provide a basis to determine the extent of the problem on a national level.

**C. Focus Upon Low-Income Customers Who Meet the Federal Lifeline Default Eligibility Criteria.**

The problem of unserved areas is not limited to the low-income. However, the Arizona Commission suggests that federal efforts focus upon low-income customers, as defined either by the federal Lifeline default eligibility criteria or state established Lifeline criteria.

**D. Allocation of Fixed Amount of Federal USF Funds to Be Used to Partially Offset Line Extension Charges And/or Line Construction Charges Associated with Establishing Service to Low-income Customers.**

The Arizona Commission recommends that the Joint Board and FCC allocate a fixed amount of federal USF funds to be used to partially offset the line extension or construction charges associated with establishing service to these low-income customers. State USF funds, such as the Arizona AUSE, would then also provide assistance for this purpose.

Allocation of a fixed amount on an annual basis for use by all states would minimize the burden on the federal High Cost Fund, as would contributions from state universal service funds.

**E. Federal and State Guidelines Setting Criteria and Standards for Distribution of Funds.**

The Arizona Commission also recommends the establishment of federal and state guidelines and criteria for the distribution of these funds, with the Joint Board having the initial responsibility for setting federal guidelines.

**F. State Examination of Cases on an Individual Basis.**

Individual states should be responsible for administering the program, as is already the case with the Commission's Lifeline and Link Up programs. The states would examine cases on an individual basis, and if they believed the appropriate standards had been met, they would recommend distribution of funds from both the federal and state USF funds.

**VI. MAXIMUM STATE FLEXIBILITY IN UTILIZING FEDERAL UNIVERSAL SERVICE FUNDS IS IN THE PUBLIC INTEREST.**

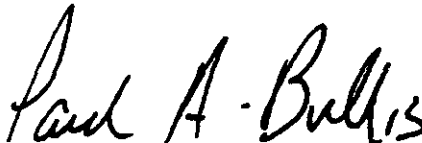
A one-size-fits-all solution to the universal service issue is not as effective as one tailored to

meet the diverse and multifaceted needs of the individual states. Consequently, the more flexibility states are given to utilize federal universal service funds to meet the needs of their individual jurisdictions, the more effectively states and the FCC can address the universal service issue.

## VII. CONCLUSION.

The Arizona Commission respectfully requests that the Joint Board and the FCC modify the federal USF distribution methodology to provide a partial offset of line construction or extension charges for low-income customers living in unserved areas.

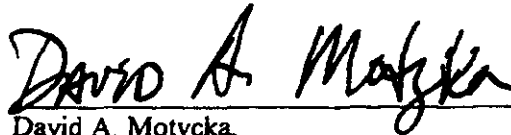
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Dated: April 27, 1998.



**APPENDIX  
SERVICE LIST**

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**APPENDIX F: INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS****1. Objectives**

190. In the 1996 Act, Congress directed the Commission to take steps to reform our existing universal service support mechanisms.<sup>365</sup> Specifically, Congress directed the Commission to devise methods to ensure that consumers in "all regions of the Nation," including "low-income consumers and those in rural, insular and high cost areas" have access to "telecommunications and information services."<sup>366</sup> Through decisions adopted over the past two years, the Commission has been striving to ensure that federal universal service support mechanisms for high-cost areas, low-income consumers, schools and libraries, and rural health care providers, enable consumers to obtain telecommunications services that would otherwise be prohibitively expensive.<sup>367</sup> Notwithstanding these efforts, certain areas of the nation remain unserved or underserved, particularly insular and Indian tribal lands. Telephone penetration rates and facilities deployment in certain high-cost areas, including tribal and insular areas, lag behind the penetration rates in the rest of the country. In this Further Notice, the Commission seeks comment on proposals designed to increase deployment of facilities necessary to provide the services supported by federal universal service support mechanisms in unserved and underserved areas and to increase subscribership among low-income consumers in certain high-cost areas.

**2. Legal Basis**

191. The Commission, in compliance with sections 1, 4, 214, 254, and 403 of the Act,<sup>368</sup> issues this Further Notice to examine mechanisms to promote deployment and subscribership in unserved and underserved areas, including tribal and insular areas.

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<sup>365</sup> 47 U.S.C. § 254.

<sup>366</sup> 47 U.S.C. §254(b)(3).

<sup>367</sup> *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking and Order Establishing a Joint Board, 12 FCC Rcd 18092 (1996) (*May 1996 Notice*); Recommended Decision, 12 FCC Rcd 87 (Jt. Bd. 1996) (*First Recommended Decision*); Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (1997) (*First Report and Order*), as corrected by Errata, CC Docket No. 96-45 (rel. June 4, 1997); Order on Reconsideration, 12 FCC Rcd 10095 (1997); Second Order on Reconsideration, 12 FCC Rcd 18400 (1997); Third Order on Reconsideration, 12 FCC Rcd 22801 (1997); Fourth Order on Reconsideration, 13 FCC Rcd 2372 (1997); Fifth Order on Reconsideration, 13 FCC Rcd 14915 (1998); Order and Order on Reconsideration, 13 FCC Rcd 13749 (1997); Second Recommended Decision, 13 FCC Rcd 24744 (1998); Sixth Order on Reconsideration, 13 FCC Rcd 22908 (1998); Seventh Order on Reconsideration, 13 FCC Rcd 19397 (1998); Eighth Order on Reconsideration, 13 FCC Rcd 25058 (1998); Ninth Order on Reconsideration, 14 FCC Rcd 377 (1998); Tenth Order on Reconsideration, FCC 99-46 (rel. Apr. 2, 1999); Eleventh Order on Reconsideration, FCC 99-49 (rel. May 28, 1999); Twelfth Order on Reconsideration, FCC 99-121 (rel. May 28, 1999); Thirteenth Order on Reconsideration, FCC 99-119 (rel. May 28, 1999); *affirmed in part, remanded in part and reversed in part*, *Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir. Jul. 30, 1999).

<sup>368</sup> 47 U.S.C. §§ 151, 154, 214, 254, 403, and 410.

### ***3. Description and Estimate of the Number of Small Entities To Which the Proposed Action May Apply***

192. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>369</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>370</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>371</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>372</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>373</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>374</sup> And finally, "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."<sup>375</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>376</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>377</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

193. As noted, under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>378</sup> The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.<sup>379</sup> We first

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<sup>369</sup> 5 U.S.C. § 603(b)(3).

<sup>370</sup> *Id.* § 601(6).

<sup>371</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>372</sup> Small Business Act, 15 U.S.C. § 632.

<sup>373</sup> 5 U.S.C. § 601(4).

<sup>374</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>375</sup> 5 U.S.C. § 601(5).

<sup>376</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>377</sup> *Id.*

<sup>378</sup> 15 U.S.C. § 632. *See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

<sup>379</sup> 13 C.F.R. § 121.201.

discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

194. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).<sup>380</sup> According to data in the most recent report, there are 3,604 interstate carriers.<sup>381</sup> These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

195. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>382</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>383</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

196. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>384</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."<sup>385</sup> For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude,

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<sup>380</sup> FCC, *Carrier Locator: Interstate Service Providers*, Figure 1 (Jan. 1999) (*Carrier Locator*). See also 47 C.F.R. § 64.601 *et seq.* (TRS).

<sup>381</sup> *Carrier Locator* at Fig. 1.

<sup>382</sup> 5 U.S.C. § 601(3).

<sup>383</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

<sup>384</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

<sup>385</sup> 15 U.S.C. § 632(a)(1).

therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and actions considered in the Further Notice.

197. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>386</sup> According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.<sup>387</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and actions considered in the Further Notice.

198. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition of small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>388</sup> The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).<sup>389</sup> According to our most recent data, there are 1,410 LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers.<sup>390</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers that may be affected by the decisions and actions considered in the Further Notice.

199. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.<sup>391</sup> According to

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<sup>386</sup> 1992 Census, *supra*, at Firm Size 1-123.

<sup>387</sup> 13 C.F.R. § 121.201, SIC Code 4813.

<sup>388</sup> 13 C.F.R. § 121.210, SIC Code 4813.

<sup>389</sup> See 47 C.F.R. § 64.601 *et seq.*; *Carrier Locator* at Fig. 1.

<sup>390</sup> *Carrier Locator* at Fig. 1. The total for resellers includes both toll resellers and local resellers. The TRS category for CAPs also includes competitive local exchange carriers (CLECs) (total of 129 for both).

<sup>391</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.<sup>392</sup> The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and actions considered in the Further Notice.

200. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules -- which, for both categories, is for telephone companies other than radiotelephone (wireless) companies.<sup>393</sup> To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 732 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services.<sup>394</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the decisions and actions considered in the Further Notice.

201. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>395</sup> For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>396</sup> These regulations defining "small entity" in the context of

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<sup>392</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>393</sup> *Id.*

<sup>394</sup> *Carrier Locator* at Fig. 1.

<sup>395</sup> See *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, FCC 96-278, WT Docket No. 96-59, ¶¶ 57-60 (June 24, 1996), 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

<sup>396</sup> *Id.*, at ¶ 60.

broadband PCS auctions have been approved by SBA.<sup>397</sup> No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

202. *SMR Licensees.* Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA,<sup>398</sup> and approval for the 900 MHz SMR definition has been sought. The proposed rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and actions considered in the Further Notice.

203. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and actions considered in the Notice includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and actions considered in the Further Notice.

204. *220 MHz Radio Service -- Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and

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<sup>397</sup> *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

<sup>398</sup> *See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).



four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies.<sup>399</sup> According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.<sup>400</sup> Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

205. *220 MHz Radio Service -- Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>401</sup> We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>402</sup> An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>403</sup> 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.<sup>404</sup> A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses.<sup>405</sup> As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

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<sup>399</sup> 13 C.F.R. § 121.201, SIC Code 4812. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

<sup>400</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

<sup>401</sup> 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291- 295 (1997). The SBA has approved these definitions. See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

<sup>402</sup> 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, para. 291.

<sup>403</sup> See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

<sup>404</sup> Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

<sup>405</sup> Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," Report No. AUC-99-24-E, DA No. 99-1287 (Wireless Telecom. Bur. July 1, 1999).

206. *Paging.* On June 7, 1999, the Wireless Telecommunications Bureau announced the first in a series of auctions of paging licenses, the first to commence on December 7, 1999.<sup>406</sup> The Bureau has proposed that the first auction be composed of 2,499 licenses.<sup>407</sup> The Commission utilizes a two-tiered definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services.<sup>408</sup> A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. The SBA has approved this definition.<sup>409</sup> At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. In addition, according to the most recent *Carrier Locator* data, 137 carriers reported that they were engaged in the provision of either paging or messaging services, which are placed together in the data.<sup>410</sup> Because the auction has yet to occur, we do not have data specifying the number of winning bidders that will meet the above small business definition. Also, we will assume that there currently are 137 or fewer small business paging carriers.

207. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

208. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>411</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>412</sup> We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>413</sup> There are approximately 1,000 licensees in the Rural

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<sup>406</sup> Public Notice, "First Paging Service Spectrum Auction Scheduled for December 7, 1999," Report No. AUC-99-26-A, DA No. 99-1103 (Wireless Telecom. Bur. June 7, 1999).

<sup>407</sup> *Id.*

<sup>408</sup> See 47 C.F.R. § 20.9(a)(1) (noting that private paging services may be treated as common carriage services).

<sup>409</sup> See Letter from A. Alvarez, Administrator, SBA, to A.J. Zoslov, Chief, Auctions Division, Wireless Telecommunications Bureau, FCC (Dec. 2, 1998).

<sup>410</sup> *Carrier Locator* at Fig. 1.

<sup>411</sup> The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

<sup>412</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 C.F.R. §§ 22.757, 22.759.

<sup>413</sup> 13 C.F.R. § 121.201, SIC Code 4812.

Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

209. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.<sup>414</sup> Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>415</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

210. *Private Land Mobile Radio (PLMR).* PLMR systems, also known as Private Mobile Radio Service (PMRS) systems, serve an essential role in a range of industrial, business, land transportation, and public safety activities.<sup>416</sup> These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of, if any, small businesses that could be impacted by the proposed rules. However, the Commission's 1994 Annual Report on PLMRs<sup>417</sup> indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact any small U.S. business that chooses to become licensed in this service. On July 21, 1999, the Wireless Telecommunications Bureau requested public comment on whether the licensing of PMRS frequencies in the 800 MHz band for commercial SMR use would serve the public interest.<sup>418</sup>

211. *Fixed Microwave Services.* Microwave services include common carrier,<sup>419</sup> private-operational fixed,<sup>420</sup> and broadcast auxiliary radio services.<sup>421</sup> At present, there are

<sup>414</sup> The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

<sup>415</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>416</sup> See 47 C.F.R. § 20.9(a)(2) (noting that certain Industrial/Business Pool service may be treated as common carriage service).

<sup>417</sup> Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

<sup>418</sup> Public Notice, "Wireless Telecommunications Bureau Incorporates Nextel Communications, Inc. Waiver Record into WT Docket No. 99-87: Seeks Comment on Licensing of PMRS Channels in the 800 MHz Band for Use in Commercial SMR Systems," DA 99-1431 (Wireless Telecom. Bureau July 21, 1999).

<sup>419</sup> 47 C.F.R. § 101 *et seq.* (formerly, Part 21 of the Commission's rules).

<sup>420</sup> Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>421</sup> Auxiliary Microwave Service is governed by Part 74 of the Commission's Rules. See 47 C.F.R. § 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies -- *i.e.*, an entity with no more than 1,500 persons.<sup>422</sup> We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

212. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.<sup>423</sup> At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

213. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and actions considered in the Further Notice includes these eight entities.

214. *Rural Health Care Providers.* Neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term "health care provider" and sets forth the seven categories of health care providers eligible to receive universal service support.<sup>424</sup> We estimate that there are: (1) 625 "post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools," including 403 rural community colleges,<sup>425</sup> 124 medical schools with rural programs,<sup>426</sup> and 98 rural teaching hospitals;<sup>427</sup> (2) 1,200 "community health centers or health centers providing health care to migrants";<sup>428</sup> (3) 3,093 "local health departments or agencies" including 1,271 local

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<sup>422</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>423</sup> This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 C.F.R. §§ 22.1001 - 22.1037.

<sup>424</sup> *See* 47 U.S.C. § 254(h)(5)(B).

<sup>425</sup> Letter from Kent A. Phillippe, American Association of Community Colleges to John Clark, FCC, dated March 31, 1997 (AACC March 31 ex parte at 2).

<sup>426</sup> Letter from Donna J. Williams, Ass'n of American Medical Colleges, to John Clark, FCC, dated September 9, 1996 (AAMC September 9 ex parte).

<sup>427</sup> Letter from Kevin G. Serrin, Ass'n of American Medical Colleges, to John Clark, FCC, dated September 5, 1996 (AAMC September 5 ex parte).

<sup>428</sup> Letter from Richard C. Bohrer, Division of Community and Migrant Health, HHS, to John Clark, FCC, dated March 31, 1997 (HHS March 31 ex parte at 2).

health departments<sup>429</sup> and 1,822 local boards of health;<sup>430</sup> (4) 2,000 "community mental health centers";<sup>431</sup> (5) 2,049 "not-for-profit hospitals";<sup>432</sup> and (6) 3,329 "rural health clinics."<sup>433</sup> We do not have sufficient information to make an estimate of the number of consortia of health care providers at this time. The total of these categorical numbers is 12,296. Consequently, we estimate that there are fewer than 12,296 health care providers potentially affected by the actions proposed in this Further Notice. According to the SBA definition, hospitals must have annual gross receipts of \$5 million or less to qualify as a small business concern.<sup>434</sup> There are approximately 3,856 hospital firms, of which 294 have gross annual receipts of \$5 million or less. Although some of these small hospital firms may not qualify as rural health care providers, we are unable at this time to estimate with greater precision the number of small hospital firms which might be affected by the proposals, if adopted. Consequently, we estimate that there are fewer than 294 hospital firms that might ultimately be affected by this Further NPRM.

#### ***4. Description of Projected Reporting, Record-keeping, and Other Compliance Requirements***

215. The measures under consideration in this Further Notice may, if adopted, result in additional reporting or other compliance requirements for telecommunications carriers, including small entities, as described below.

216. Certain measures under consideration in this Further Notice may, if adopted, result in increased federal universal service support obligations for telecommunications carriers required to contribute to federal universal service support mechanisms. Specifically, in this Further Notice, the Commission seeks comment on the possibility of allowing carriers to form separate tribal study areas;<sup>435</sup> lifting the cap on the high-cost fund to allow for growth resulting from the use of tribal study areas;<sup>436</sup> amending the consumer qualification criteria for determining eligibility for Lifeline;<sup>437</sup> expanding LinkUp to include facilities based line-extension charges or other construction costs;<sup>438</sup> providing support for intrastate toll-calling;<sup>439</sup>

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<sup>429</sup> Telephone contact by John Clark, FCC, with Carol Brown, National Association of County Health Officials, May 2, 1997.

<sup>430</sup> Letter from Ned Baker, Nat'l Ass'n of Local Boards of Health, to John Clark, FCC, dated April 2, 1997 (Nat'l Ass'n of Local Boards of Health April 2 ex parte).

<sup>431</sup> Telephone contact by John Clark, FCC, with Mike Weakin, Center for Mental Health Services, HHS, on May 2, 1997.

<sup>432</sup> American Hospital Association Center for Health Care Leadership, A Profile of Nonmetropolitan Hospitals 1991-95 at 5 (1997).

<sup>433</sup> Letter from Patricia Taylor, ORHP/HHS, to John Clark, FCC, dated May 2, 1997 (ORHP/HHS May 2 ex parte).

<sup>434</sup> 13 C.F.R. § 121.201, SIC 8060.

<sup>435</sup> See paras. 63-65.

<sup>436</sup> See paras. 66-67.

<sup>437</sup> See paras. 71-72.

<sup>438</sup> See paras. 118-120.

<sup>439</sup> See paras. 121-122.

and providing support for the deployment of infrastructure necessary to provide rural health care providers with access to telehealth and telemedicine initiatives.<sup>440</sup>

217. Certain measures under consideration in this Further Notice may, if adopted, result in additional obligations for carriers filing petitions pursuant to section 214(e)(6) of the Act or subject to proceedings conducted pursuant to section 214(e)(6) of the Act. Section 214(e)(3) of the Act authorizes the Commission to designate carriers not subject to the jurisdiction of a state commission as an eligible telecommunications carriers. Specifically, carriers may be required to provide an analysis of the Commission's jurisdiction in conjunction with filing petitions under this provision. Section 214(e)(3) of the Act authorizes the Commission to identify the carrier or carriers best able to provide the services supported by federal universal service support mechanisms in unserved areas, and to order that carrier or carriers to provide such service. One option under consideration is for the Commission to conduct a fact-based inquiry of the common carriers serving areas near the unserved area to determine where existing facilities are deployed, to estimate the costs for each carrier to provide the supported services, and to consider other factors that may be relevant to the determination. This proposal could result in rules requiring carrier to submit information to the Commission that is needed in making this determination.<sup>441</sup>

218. Finally, certain measures raised in this Further Notice could result in additional compliance requirements for carriers designated as eligible telecommunications carriers. Specifically, the Commission seeks comment on the possibility of expanding the provision of toll limitation offerings<sup>442</sup> and on requiring additional publicity for the availability of low-income support.<sup>443</sup>

#### ***5. Significant Alternatives To Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives***

219. With respect to the possibility of increased universal service contribution requirements, the primary alternative to the proposals contained in the Further Notice which would minimize the economic impact on small entities would be to determine not to provide an increased amount of support. In this proceeding, the Commission will consider whether the alternative – not to provide the additional support -- would nevertheless accomplish its stated objectives. We observe that section 254(d) of the Act requires that all telecommunications carriers contribute to the federal universal service support mechanisms on “an equitable and nondiscriminatory basis.” As a result, the Commission may not propose alternatives specifically designed to minimize the economic impact on small entities. We note, however, that the Commission has established a *de minimis* exception from universal service contribution obligations for carriers whose interstate end-user telecommunications revenues in a given is less than \$10,000.<sup>444</sup> This exception should lessen the burden on telecommunications carriers that meet the definition of small entities.

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<sup>440</sup> See paras. 128-133.

<sup>441</sup> See para. 95.

<sup>442</sup> See para. 123.

<sup>443</sup> See paras. 124-127.

<sup>444</sup> See 47 C.F.R. §54.705.

220. With respect to the information that may need to be submitted in conjunction with petitions filed pursuant to section 214(e)(6) and proceedings conducted pursuant to section 214(e)(3), the primary alternative would be for the Commission to determine that the information is not required or to conclude that it could obtain the information from alternative sources. In seeking comment on this issue, the Commission intends to develop a record to determine whether the information is necessary and the appropriate source for obtaining it. In addition, with respect to proceedings conducted pursuant to section 214(e)(6), the Commission seeks comment on the possibility of providing an exception for carriers that meet the definition of small entities.<sup>445</sup> Moreover, the Commission seeks comment on the possibility of using a voluntary competitive bidding mechanism instead of the more cumbersome, fact-based inquiry. If the competitive bidding proposal adopted, the compliance requirements for all carriers, including carriers that meet the definition of small entities, could be avoided.

221. Finally, with respect to the additional compliance requirements for carriers designated eligible telecommunications carriers, the Commission does not seek comment on whether an exception for carriers meeting the definition of small entities is appropriate. In setting the standard for what services carriers designated as eligible telecommunications carriers must provide, the Commission has established a uniform, nationwide standard for the services to which all Americans should have access. Individual carriers, however, may obtain a waiver of the Commission's rules if good cause is shown therefor.<sup>446</sup>

***6. Federal Rules that May Duplicate, Overlap, or Conflict With the Notice***

222. None.

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<sup>445</sup> See para. 95.

<sup>446</sup> See 47 C.F.R. §1.3

**SEPARATE STATEMENT OF  
COMMISSIONER HAROLD FURCHTGOTT-ROTH  
DISSENTING IN PART**

*Re: Federal-State Joint Board on Universal Service: Promoting Deployment and  
Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas,  
CC Docket 96-45.*

I support many of the worthwhile goals of today's Order. Although I write separately to express limited concerns about this item, I commend my colleagues and the members of the Commission staff who have worked so diligently on this important action.

First, I object to the item's apparent invention of a new classification described as "underserved areas." This classification does not appear in the Communications Act. In fact, the Act specifically refers to a category of "unserved areas" for which Congress directed the Commission and the States to take specific action. *See* Section 214(e)(3). Congress, however, did not create a category of "underserved areas," and the Commission has no authority to create one on its own motion. I believe the Commission can achieve the goals set forth in this item without inventing new terms and, as a result, placing at risk the goals we seek to serve in this item.

Section 214(e)(6) directs the Commission to designate a common carrier as an eligible telecommunications carrier for purposes of receiving universal service support when, *inter alia*, the common carrier is not subject to the jurisdiction of a State commission. Although the goals of today's Order are worthwhile, meeting these goals should not result in overbroad results. I thus object to the tentative conclusion that this section should be interpreted such that the determination of whether a carrier is subject to the jurisdiction of a State commission depends on the geographic area in which the service is being provided (e.g. tribal lands) *or* the nature of the service provided (e.g. satellite or terrestrial wireless). *Supra.* at par. 78. I am concerned that such a conclusion will ultimately lead to the federal government designating satellite and terrestrial wireless carriers as eligible telecommunications carriers outside of tribal areas. I dissent from this tentative conclusion, because I do not believe that this outcome is supported by section 214(e)(6).

Finally, I question the decision to solicit comment regarding whether the Commission should establish national guidelines by which states must make the determination of which carriers are best able to provide services to unserved areas. *Supra.* at par. 93. The Fifth Circuit only last month reversed a Commission order interpreting a very similar statutory provision in which the Commission attempted to prohibit States from developing their own requirements when designating carriers as eligible for federal universal service support pursuant to section 214(e)(2).<sup>447</sup> When the Commission solicits comment on a topic, it encourages members of the

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<sup>447</sup> *Texas Office of Public Utility Counsel, et al., v. FCC*, United States Court of Appeals for the Fifth Circuit, No. 97-60421, rel. July 30, 1999.



public to expend resources responding to that solicitation. I believe it is irresponsible to encourage such a use of resources when Commission action is unlikely because a federal appeals court has called into significant doubt the legality of the proposal at issue.

## Separate Statement of Commissioner Gloria Tristani

*Re: Federal-State Joint Board on Universal Service: Promoting Deployment and  
Subscribership in Unserved and Underserved Areas, CC Docket No. 96-45; Extending  
Wireless Telecommunications Services, WT Docket No. 99-266.*

I write separately to underscore my support for these items. Both Notices of Proposed Rulemaking are intended to address and remedy the dearth of telecommunications in Indian country and other unserved and underserved areas. The facts are not in dispute. While Americans on average enjoy a telephone subscribership rate of 94%, many communities and areas throughout the land are not so fortunate. And Indians living on tribal lands are the least fortunate of all. Telephone subscribership rates on tribal lands fall under 50% in many instances and even under 30%, as in the case of the Navajo reservation.

These woeful statistics are not new, and this is not the first time that the federal government and others have taken notice. What is new, is that the Federal Communications Commission has not only taken notice, but is now embarked in taking concrete action to change these statistics. The items ask thoughtful, appropriate and insightful questions, including questions about the scope of the problem, the nature of the federal relationship with tribal sovereign governments, and the extent to which the FCC should act to remedy the problem.

But, more importantly, the items posit concrete suggestions – targeting universal service support, bolstering and/or tailoring the Lifeline and Linkup programs, using alternative technologies — on how to provide telecommunication services to Indian country and other unserved and underserved communities. These suggestions are good first steps but I hope commentators will not hesitate to suggest any other appropriate and innovative measures.

Finally, while I am proud to support these items, I believe it is our statutory and moral obligation to bring telecommunications to Indian country. Section 254 of the Telecommunications Act mandates that we assure that all Americans have access to telecommunications services. The federal trust relationship between tribal sovereign governments and the federal government suggests that we have an obligation to do even more. But history, notions of equality, and the principles on which this Nation was founded tell us that it is unconscionable that Indians, the first Americans, remain the last Americans to enjoy the wonders and benefits of the Information Age. I trust that the small steps we take today will go a long way in changing this picture.